## THE COMBINATION OF THE CITED REFERENCES CAN ONLY BE GLEANED THROUGH HINDSIGHT REASONING.

There is no basis for making the suggested combination. There must be a showing of some teaching in the prior art or that knowledge generally available to one of ordinary in the skill of the art would lead that individual to combine the relevant teachings of the references. In Re Fine, 837 F2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed Cir 1988) (citing In Re Lalu, 747 F2d 703, 705, 223 USPQ 1257, 1258 (Fed Cir 1988). A rejection based on § 103 must rest on a factual basis, with the facts being interpreted without hindsight reconstruction of the invention from the prior art. In making this evaluation, there is an initial burden of supplying the factual basis for the rejection advanced. One may not, because of doubt that the invention is patentable, resort to speculation, unfound assumption or hindsight reconstruction to supply deficiencies in factual basis. See In re Warner, 379 F.2d 1011, 154 USPQ 173 (CCPA 1967). At best the cited combination of Reidel and Richter can only arrive at the present invention by hindsight reconstruction which is not permitted.

Accordingly, it is respectfully requested that claims 1-4 now be allowed.

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## THE COMBINATION OF THE CITED REFERENCES IS NOT OBVIOUS

As the court of Appeals, Federal Circuit has set forth, even if prior art references could be combined to construct an applicants invention, the modification is not obvious unless there is a suggestion in the prior art. In re Laskowski 10 USPQ2d 1397 1398 (Fed. Cir. 1989). Applicant respectfully submits that there is no suggestion in either Reidel or Richter to modify Reidel to include an adjustment in the slack to produce a short flush. Further there is no suggestion in either Reidel nor Richter to provide a system wherein the short flush automatically terminate without the need to hold the handle throughout the flush. Therefore the claims are distinguishable over the art of record.

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